



December 21, 1999

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR99-3714

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 130394.

The Texas Department of Criminal Justice (the “department”) received a request for information regarding an alleged sexual assault on an inmate by a prison guard and the department’s investigation of the incident. You state that the department will release some of the requested information. You claim that the balance of the information in question is excepted from disclosure under sections 552.108 and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.108 of the Government Code, the “law enforcement” exception, provides in relevant part that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state that the requested information relates to an investigation that did not result in a conviction or a deferred adjudication. Based on your representation and our review of the information at issue, we conclude that the department may withhold most of it pursuant to section 552.108(a)(2).

We note, however, that section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c).

We believe that section 552.108(c) refers to the basic front-page offense and arrest report information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976). The department must release basic offense and arrest report information, even if it does not appear on the front page of a report.

As we have concluded that section 552.108 requires the department to release basic information about its investigation, we also will consider whether that information is excepted from disclosure under section 552.131. Sections 552.131, "Certain Information Relating to Inmate of Department of Criminal Justice," and 552.029, "Right of Access to Certain Information Relating to Inmate of Department of Criminal Justice," were added to subchapters C and B, respectively, of chapter 552 of the Government Code by the Seventy-sixth Legislature. Section 552.131 provides, in relevant part, that "[e]xcept as provided by . . . Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department." Gov't Code § 552.131(a). Section 552.029 provides in relevant part:

Notwithstanding Section . . . 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure [:]

(1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

. . .

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(1), (8). In this instance, the information in question relates to an alleged sexual assault on an inmate by a prison guard. Sexual assault is a criminal offense under section 22.011 of the Penal Code. We therefore believe that the alleged sexual assault represents "an alleged crime involving an inmate," so that basic information about the incident is subject to public disclosure under section 552.029. We note, however, that although the legislature did not define the nature of "basic information" for the purposes of section 552.029(8), the legislative history reflects that the phrase was borrowed from section 552.108(c). Hearing on H.B. 1379 before the House Committee on Corrections, 76th Leg., R.S. (April 6 1999) (remarks of Carl Reynolds, General Counsel, Texas Department of Criminal Justice). By analogy to section 552.108(c), we therefore believe that the basic information that must be released pursuant to section 552.029(8) includes the time and place of the incident, the names of inmates and officials of the department who were directly

involved, a brief narrative of the incident, a brief description of any injury sustained, and information regarding any criminal charges or disciplinary actions that resulted from the incident. *Compare Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d at 186-87. Thus, as a consequence of the analogous relationship between sections 552.029(8) and 552.108(c), essentially the same “basic information” is subject to public disclosure under both section 552.108(c) and 552.131 in conjunction with section 552.029.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

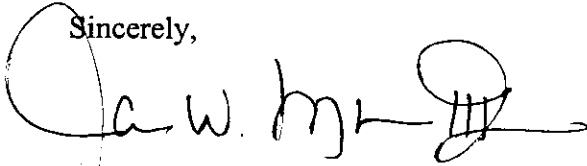
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹As the requestor is the inmate's legal representative, section 552.028(a) does not permit the department to decline to honor the request.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large circular flourish on the left side.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/nc

Ref: ID# 130394

Encl. Submitted documents

cc: Mr. James Harrington
Texas Civil Rights Project
2212 E. MLK Boulevard
Austin, Texas 78702-1344
(w/o enclosures)